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International Covenant on Civil and Political Rights

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Human Rights Committee

Ninety-eighth session

Summary record of the 2695th meeting

Held at Headquarters, New York, on Monday, 15 March 2010, at 10 a.m.

Chair: Sir Nigel Rodley (Vice-Chair)

Contents

Organizational and other matters (*continued*)

Working methods (*continued*)

This record is subject to correction. Participants wishing to submit corrections during the session of the Committee are asked to hand them, in typewritten form, to the Secretary of the Committee. A consolidated corrigendum of the summary records covering the closed meetings of the Committee will be issued shortly after the session.

10-27109 (E)

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In the absence of Mr. Iwasawa, Sir Nigel Rodley, Vice-Chair, took the Chair.

The meeting was called to order at 10.15 a.m.

1. **The Chair**, speaking on behalf of the Committee, expressed his deepest condolences to Mr. Iwasawa, whose mother had passed away.

Organizational and other matters (*continued*)

Working methods (*continued*)
(CCPR/C/2009/1/CRP.2; HRI/GEN/2/Rev.5)

2. **The Chair** invited the Committee to continue its consideration of the draft revised guidelines (CCPR/C/2009/1/CRP.2).

3. **Ms. Keller**, recalling the discussions of the Committee at its ninety-seventh session on the draft revised guidelines, drew attention to those paragraphs in which approved changes had been incorporated, namely, paragraphs 14 and 15 on focused reports based on replies to lists of issues, and paragraph 25, which now included a proposal made by Ms. Wedgwood for the consideration of the Committee. She suggested that the Committee might wish to discuss paragraph 17 in light of its recent meeting with representatives of the Department for General Assembly and Conference Management (DGACM) and the Programme Planning and Budget Division (PPBD); as currently drafted, the paragraph imposed no page limits on reports of States parties.

4. **Mr. Thelin** said he was in favour of setting page limits for States parties' reports.

5. **Mr. Lallah** said that while he, too, generally supported setting page limits, it was difficult to determine an appropriate limit, as some questions on a list of issues required detailed responses, whereas other, more general ones could be covered in the core document submitted by a State party. In that connection, he wondered whether the Committee might consider asking States to cover some of the questions normally asked on a list of issues in their core document.

6. **Mr. Pérez Sánchez-Cerro** said that it was clear from the Committee's meeting with DGACM and PPBD representatives that, rather than seek additional funding for document processing, the Committee should strive to reduce the documentation produced by and for its meetings. He therefore supported setting page limits on reports submitted by States parties; such limits would furthermore guide them in providing the focused responses sought by the Committee. The importance of the timely submission of States parties' reports should also be emphasized.

7. **Mr. O'Flaherty** said that he questioned the usefulness of discussing page limits before more substantive issues, such as the content and format of the list of issues.

8. **Mr. Amor** said that he supported streamlining the reporting process, on the understanding that the Committee would explore issues that remained unclear in more detail during its constructive dialogues with States parties. Furthermore, the Committee must cease treating States parties unequally with regard to the amount of time allocated to the consideration of their reports: one rule should apply to all.

9. **Ms. Motoc** said that it was difficult to determine a page limit that was appropriate to all States parties. Moreover, imposing additional rules on States parties would not necessarily facilitate the Committee's work. She supported the statement made by Mr. Amor regarding the need to allocate every State party the same number of hours for consideration of their report. However, it was also the Chair's responsibility to guide the constructive dialogue with the State party in order to cover the issues raised by the Committee in a satisfactory manner.

10. **Ms. Chanet** said that she agreed that the issue of page limits would resolve itself once the Committee had adopted guidelines on the content and format of the list of issues. The Committee was aware of the types of questions that were likely to lead to lengthy responses by States parties and should refrain from asking for additional details where possible. Furthermore, some questions could be covered in the core document, as proposed by Mr. Lallah. As for the equal treatment of States parties, she pointed out that some States parties were treated differently because they interacted differently with the Committee. While such situations needed to be dealt with promptly by the Chair, the Committee as a whole should not be criticized for unequal treatment of States parties if the number of hours originally allocated for consideration of a report needed to be increased.

11. **Mr. Thelin** said that while he agreed that all States parties should receive equal consideration by the Committee, it was important to note that not all States

parties adhered equally to the Covenant and that consideration of their reports might therefore require more time. That did not mean, however, that the Committee should not institute a cap on the number of pages in a report, which helped States parties focus more narrowly on the questions put to them. He would therefore be in favour of the shortest possible page limit.

12. **Mr. O'Flaherty** said that information on the page limits currently being imposed by other treaty bodies would be useful.

13. **The Chair** said that, according to the harmonized guidelines on reporting under the international human rights treaties including guidelines on a core document and treaty-specific documents (HRI/GEN/2/Rev.5), common core documents should not exceed 60 to 80 pages, initial treaty-specific documents should not exceed 60 pages and subsequent periodic documents should be limited to 40 pages. Speaking in his capacity as an expert, he said that he was in favour of setting page limits. While the Committee could not countermand the harmonized guidelines, it could decide whether or not to refer to them in its own reporting guidelines.

14. **Ms. Motoc**, noting that the words "if possible" preceded the page limits indicated in the harmonized guidelines, said that the Committee's own guidelines currently left it significantly more flexibility. If the Committee decided to impose a streamlined, more focused report on States parties, the latter might feel the need to express themselves at greater length during the constructive dialogue and thus increase the Committee's workload.

15. **Mr. O'Flaherty**, pointing out that the suggested page limits referred to in the harmonized guidelines had in fact been drafted by the Secretariat, proposed that the limits should simply be referred to in the Committee's revised guidelines.

16. **Ms. Keller** said, in reply to Mr. Amor, that the question of a page limit had been dictated by a concern to provide guidelines applicable to all countries. Concerning Mr. Lallah's suggestion that some issues might be transferred to the core document, she pointed out that the Committee was not competent to determine what went into that document.

17. **The Chair** said that he had understood Mr. Lallah to mean that in cases where an issue was already addressed in the core document, it could be omitted from the focused report. He proposed that paragraph 19 should remain pending in the absence of a consensus and that the Committee should proceed on an article-by-article basis.

18. **Mr. Lallah** said that his concern had been to reduce the number of questions, which took up more than 70 paragraphs in the draft revised guidelines, either by transferring or eliminating some of them. Furthermore, it would be useful to make it clear whether initial reports or focused reports were being referred to: some questions seemed to concern the initial report and others to relate to both.

19. **The Chair** said that there was indeed no need to repeat what was already in the core document. The guidelines related to some extent to the initial report, but they remained relevant to subsequent reports, including the focused report option.

20. **Ms. Chanet** said that the most important issues should be addressed in the initial report and that an effort should be made to eliminate any duplication.

21. **Mr. Fathalla** noted that paragraph 27 of the draft referred to "the most urgent problems arising in the reporting period": that was clearly applicable to both types of reports.

22. **Ms. Keller** said that paragraph 16 clearly indicated that States not subject to the procedure described in paragraph 15 should follow the guidance provided in paragraphs 18 to 103. In the new procedure, those paragraphs would not be applicable: questions would be chosen according to their importance for the State party concerned. Detailed questions would apply to initial or to full reports.

23. Turning to the chapeau provision in paragraph 27, she stressed that the questions were only possible ones and that States parties would not be required to answer every one of them; they might, however, serve to guide officials in preparing the report. On the possible elimination of questions addressed in the core document, it had to be carefully checked that they were indeed covered in that document, bearing in mind its non-specific character.

24. **The Chair** noted that the document under consideration was not designed to provide strict rules but merely guidelines. With regard to the issue raised by Mr. Amor concerning the different number of hours allocated to each State for consideration of periodic

reports, he proposed that it should be addressed separately, perhaps by the Bureau.

25. **Ms. Majodina** asked when it had been agreed that the new procedure would not apply to the initial report, as stated in paragraph 15.

26. **Ms. Keller** said that the Committee had so decided in October 2009 and that no changes had been made to the draft guidelines, which were based on the Committee's practice, since that time. She also recalled that the criteria for selecting countries to be discussed in closed meeting were intended for the use of the Committee, not of States parties. Reverting to the question of the relationship to the core document, she cited paragraph 34 as an example of that document being taken into account.

27. **The Chair** noted that the wording of the draft guidelines was, however, completely new in relation to the original guidelines, which were still in force.

28. **Mr. O'Flaherty** said that it might be useful to request in paragraph 27 that, when a State had already provided relevant information in its core document, it should refer thereto in its treaty-specific report; a simple cross-reference would suffice. That paragraph might also refer to all relevant General Comments, but in general terms, as new ones were constantly being adopted by the Committee.

29. **Ms. Keller** said that Mr. O'Flaherty's first suggestion could easily be accommodated; as for the second, it was already covered by paragraph 18.

30. **Mr. O'Flaherty** noted the omission of any reference to a General Comment in paragraph 85; that was no doubt due to the fact that a new one was currently being drafted on article 19, to which it related. Once the new General Comment was adopted, however, it would be appropriate to refer to it in that paragraph. Since the Committee could not revisit the guidelines each time a new General Comment was adopted, the solution would be to insert a chapeau provision in section IV.

31. **Mr. Thelin** said that he agreed on the need for a clear reference to all relevant General Comments. Paragraph 13, which identified the various types of reporting scenarios, might be a good place to insert such a chapeau provision.

32. **The Chair**, speaking in his capacity as an expert, said that it would be useful to refer as appropriate to General Comments under each article; it would then be necessary to amend the reporting guidelines each time a new one was adopted. That question would need to be taken up at a later stage. In his capacity as Chair, he invited the Committee members to consider the draft guidelines article by article.

Articles 1-2

33. *Paragraph 28, relating to article 1, and paragraphs 29-33, relating to article 2, were approved.*

Articles 2 (1), 3 and 26

34. **Ms. Majodina** proposed the inclusion in the last bullet of paragraph 35 of a request for information about the mechanisms for reporting such cases, in addition to information about steps taken to eliminate such discrimination.

35. **Mr. O'Flaherty** wished to know why article 26, which was so important in itself, had been grouped with articles 2 (1) and 3. He also wondered whether there was a sufficiently clear indication of the need for disaggregated data regarding discrimination. Paragraph 38 adequately addressed the various forms of discrimination against women, but paragraph 35 did not cover all possible grounds of discrimination. The first bullet of that paragraph might usefully stipulate "other status, as well as on any other grounds identified by the Committee", so as to make it clear that the Committee's concerns were not limited to the grounds listed in articles 2 and 26.

36. **Ms. Keller** said that she could accept Ms. Majodina's suggestion. In reply to Mr. O'Flaherty's question, she said that the three articles had, exceptionally, been grouped together in line with the Committee's current practice regarding lists of issues. She could also accept his suggestion to include a reference in paragraph 35 to other grounds of discrimination identified by the Committee.

37. **The Chair** said that Mr. O'Flaherty's proposed new wording might suggest that new categories of discrimination had been introduced even beyond those already covered by "other status"; that would need to be ironed out.

38. **Mr. O'Flaherty** suggested the following amended new wording: "other status, such as those identified in the practice of the Committee". He continued to wonder whether the need for disaggregated data

regarding all grounds of discrimination was adequately covered. Specific language was not required, but merely a mention of the importance of disaggregated data across all grounds of discrimination.

39. *Paragraphs 34 to 38, relating to Articles 2 (1), 3 and 26, were approved, subject to drafting changes.*

Article 4

Paragraphs 39 to 43

40. **Mr. Fathalla**, referring to paragraph 41, wondered what the words "correct exercise" meant, when it came to the use of extraordinary powers during a period of emergency.

41. **Ms. Keller** said that the phrase meant "in conformity with the Covenant".

42. **The Chair** suggested the following wording: "to ensure that measures taken under a state of emergency are consistent with the requirements of the Covenant".

43. **Mr. O'Flaherty** said that paragraph 42 should include a requirement for the State party to inform the United Nations Secretary-General.

44. **Ms. Keller** said that she agreed, but added that if the Committee continued along those lines, the list could become longer than before, as the previous text had excluded items that had already been spelled out in the Covenant.

45. **The Chair** reminded the Committee that a notification requirement was already in the table of ratifications, reservations and notifications, and that it was not necessary to include it in paragraph 42.

46. **Mr. O'Flaherty** said that it was better to include the requirement. It was not just an incidental detail, but an important provision that was often ignored and violated, even though it could serve as a pedagogical tool and a control element for the States. By being reminded of that notification obligation, States might just end up informing the Secretary-General in the process.

47. **Mr. Lallah** said that other bodies, including the Human Rights Committee, were also more likely to be notified.

48. **Ms. Chanet** suggested moving paragraph 33 on terrorism from article 2 to article 4, where it belonged logically.

49. *Paragraphs 39 to 43 relating to article 4 of the Covenant were approved, as amended.*

Article 6

Paragraphs 44 to 47

50. **Mr. O'Flaherty**, turning to paragraph 47, said that he regretted that little reference was made to non-death penalty-related elements. In addition, the reference in the second bullet to measures taken to help women prevent unwanted pregnancies was unrelated to article 6 as drafted. Given the very narrow basis on which abortion was dealt with by the Committee, the reference should be nuanced. According to the jurisprudence and practice of the Committee, article 6 did not include a generic entitlement to prevent unwanted pregnancies. Accordingly, the text should be redrafted to refer, for example, to measures taken to help women avoid practices that would put their lives at risk.

51. With regard to the last bullet of paragraph 47, General Comment No. 14 referred to nuclear proliferation and hence the reference to nuclear disasters was acceptable. However, including other items such as environmental pollution and malnutrition went too far and was not consonant with the Committee's practice.

52. **Ms. Keller** noted that equal access to information and medical care concerning pregnancy had already been covered in several State reports. Nevertheless, if her understanding was incorrect, then maybe the wording could be amended.

53. **Ms. Chanet** said that the Committee should simply ask States what they did in cases of unwanted pregnancies and in situations where the mother's life was at risk.

54. **Mr. Thelin** said that parts of the bullet were straying too far into the area of positive rights; he suggested deleting it altogether and adding language to the penultimate bullet to capture the idea of risk to the mother's life.

55. **The Chair** suggested that paragraph 47 could simply borrow from the language of General Comment No. 28, paragraph 10, which stated that: "States parties should give information on any measures taken by the State to help women prevent unwanted pregnancies, and to ensure that they do not have to undergo life-threatening clandestine abortions".

56. **Mr. O'Flaherty** said that he failed to see how the generic issue of unwanted pregnancies fell within the ambit of the Covenant. The solution of deleting the last bullet of paragraph 47 was not ideal; instead, the language could be amended to capture social risks to life and life expectancy, without going into economic, social and cultural areas. Wording to the effect of "measures taken to increase life expectancy, including through addressing the risk to life to be found in society", could be included in the text.

57. **The Chair** suggested that the first clause could read "measures taken to increase life expectancy through reduction of infant mortality", or the reference to the reduction of infant mortality could simply be removed.

58. **Ms. Motoc** suggested that if social and economic rights were indivisible from civil and political rights, they should be included.

59. **The Chair** suggested a compromise solution of keeping only the first six words of the bullet point "measures taken to increase life expectancy".

60. **Mr. Salvioli** said that he supported the proposed text as drafted and did not feel that it strayed into areas beyond the Committee's mandate.

61. **Ms. Chanet** said that those rights were already in the core document and did not need to be repeated in the proposed text, because it would only give States parties another excuse to digress and to inundate the Committee with information about countless programmes and plans of action. She suggested deleting the bullet to limit the number of pages that States parties would produce.

62. **Mr. O'Flaherty** said that he agreed that the bullet should be deleted.

63. **The Chair**, speaking in his capacity as an expert, suggested that in the first bullet of paragraph 45, the Committee should guide States parties as to the approaches to be followed in the use of force and firearms by the police and security forces. He preferred making reference to a soft law from another body, typically the United Nations Principles on the Use of Force and Firearms by Law Enforcement Officials, as other treaty bodies and international courts often did. At the very least, the use of force and firearms should reflect the principle of necessity, meaning that minimum reasonable force should be used, or of proportionality, meaning that such force should be commensurate with the objective to be obtained. Indeed, the Committee itself had already made reference to such soft law in some of its concluding observations and in individual cases.

64. **Mr. Amor**, in reference to paragraph 47, suggested adding the notion of honour crimes to the points listed in the penultimate bullet.

65. **Mr. Thelin** suggested that the word "honour" should be put in quotation marks, or that the qualifier "so-called" should be added to reflect the fact that those crimes had nothing to do with real honour.

66. *Paragraphs 44 to 47, pertaining to article 6 of the Covenant, were approved, as amended.*

Article 7

Paragraphs 48 to 53

67. **Ms. Chanet**, referring to paragraph 48, welcomed the clear and precise language of the first four bullets and requested that the fifth and sixth bullets should be revised to bring them in line with the first four. In paragraph 49, the reference to "detailed information" should be removed and States parties should simply be asked to "indicate" the measures taken to ensure dissemination of information to the population, to prohibit torture, to provide training to law enforcement officials, and to compensate victims.

68. **Mr. Amor** expressed concern about the end of paragraph 53, which referred to practices governing experimentation on human beings and mechanisms to ensure that experimentation on individuals not capable of expressing free consent was made impossible. In difficult circumstances where the life of a person depended on the use of medication that had not been fully tested, it would be reasonable to allow parents or legal guardians to be able to give such consent, especially in cases of road accidents, albeit within legal limits.

69. **Ms. Chanet** said that the Committee had already taken a position on the issue of experimentation in its concluding observations on the Netherlands. Reference could be made to the measures taken to ensure consent in the case of experimentation, and perhaps a question could be asked regarding what happened to people who could not give such consent.

70. **The Chair** suggested simply asking what measures States had taken to ensure that consent was

given, without being as peremptory as the paragraph would suggest.

Article 8

Paragraphs 54 to 57

71. **Mr. O'Flaherty** said that in paragraph 54, the phrase "any resurgent form of slavery" should be replaced by "contemporary forms of slavery". The word "prostitution" should be deleted, as the Committee had never stated that it fell under article 8. The phrase "prostitution and human trafficking" should be replaced with "all forms of human trafficking". The phrase "in this regard" should be deleted.

72. A bullet should be added to paragraph 54 regarding training for all public officials involved in addressing trafficking. While many States had excellent laws against trafficking, officials lacked understanding of the issue. Paragraph 57 should be deleted. Compulsory military service had been dealt with under article 18, not as an issue related to slavery or servitude.

73. **Ms. Motoc** said that since the reference to slavery covered servitude as well, the word "servitude" in paragraph 54 was unnecessary. In many cases, prostitution was quite close to trafficking in persons. Consent was sometimes weak. While in some countries work permits were issued to prostitutes, the trend in human rights was away from legalizing prostitution. The issue of demand for trafficking must be addressed directly: trafficking existed because there was a demand for it.

74. **Mr. Amor** said that many forms of servitude were not new, for example, slavery. He therefore preferred the phrase "all forms of servitude and trafficking", without reference to prostitution and the abduction of women and children. The phrase "measures to eradicate definitively all forms of servitude" could also be included.

75. **Mr. O'Flaherty** noted that the purpose of his drafting comments was not to express a personal position, but rather to achieve a document which best expressed the practice of the Committee. He had not expressed a personal view on the relationship of prostitution to human rights.

76. **Ms. Chanet** said that she agreed that paragraph 57 should be deleted. She also agreed with Mr. O'Flaherty's comments on prostitution and with those of Mr. Amor in reference to paragraph 54.

77. **Ms. Motoc** said that she had not expressed a personal view on prostitution. Rather, her comments reflected a position which was widely held and which had been voiced by the Special Rapporteur on violence against women, its causes and consequences and by the Special Rapporteur on trafficking in persons, especially in women and children.

78. **The Chair** said that the present meeting was not the forum for establishing new policy.

79. **Mr. Rivas Posada** agreed that paragraph 57 should be deleted.

80. **Ms. Keller** said that she endorsed the suggestion to delete paragraph 57 and add a fourth bullet in paragraph 54. However, given that the document was addressed not just to human rights experts, in her view the phrase "such as abduction of women and children" should not be deleted. Perhaps it could be included in parentheses, after the word "servitude". The new version of the paragraph would read as follows: "Indicate what legal and other measures have been taken to prevent and combat any contemporary form of slavery and other forms of servitude (such as abduction of women and children) and trafficking."

81. **The Chair** said that just a few days earlier, Uzbekistan had referred to alternative military service under article 8. Therefore, for the purpose of informing States how the issue was to be dealt with, perhaps paragraph 57 should contain a reference to article 18, and the present paragraph 57 should be moved to the section covering article 18. It appeared that the members of the Committee agreed with that approach, as they did with the new version of paragraph 54.

82. **Mr. Amor** noted that there should be mention of domestic labour. In some cases, it amounted to a form of slavery, often involving little girls.

83. **Ms. Chanet** expressed concern about the risks involved in making lists. In her view, forced marriage was worse than prostitution. If a list was compiled, something would surely be left out. It was better to use more generic terms.

84. **The Chair** said that, paradoxically, the more inclusive the Committee was, the more implicitly exclusive it would be. However, the purpose was to give guidance to States, and generic language added

little to what was already in the Covenant. Two approaches had taken shape in the course of the discussion, one of which was to mention slavery, contemporary forms of slavery and all other forms of servitude and to stop there. The other approach was to include the abduction of women and children, all forms of human trafficking, enforced domestic work and forced marriage. He saw the inclusive route as more helpful to States. The purpose of the current exercise was to provide guidance to States, and it was therefore necessary to make the guidelines reflect the current Committee practice.

85. **Mr. Lallah** said that bonded labour should be mentioned, as well. The Committee had dealt with the issue in the case of India.

86. **The Chair** said that as bonded labour was a contemporary form of slavery, he had no objection to including it.

87. **Ms. Motoc** said that bonded labour was not new.

88. **Mr. Amor** said that it was best to use generic terms in the text and raise specific issues with States.

89. **The Chair** said that if generic terms were used rather than a list, those terms would include contemporary forms of slavery and all forms of servitude. There should also be mention of trafficking.

90. After requesting the members of the Committee to indicate by a show of hands which of the two approaches they supported, he noted that the room was evenly divided in its opinions.

91. **Ms. Majodina** said that there should be a list. In many countries, such forms of servitude as abduction of women and children and forced marriages were traditional practices, and even government officials saw nothing wrong with them. It would be useful to draw the attention of States parties to the fact that such practices were wrong and in violation of article 8 of the Covenant. In many African countries, people saw nothing wrong with a child of 5 years of age working in a huge household.

92. **Mr. O'Flaherty** said that he favoured generic references because the guidelines must be applicable to all countries, regardless of their human rights situation. A list would be imperfect because it would encompass only certain phenomena. The term "contemporary forms of slavery" was inclusive, covering all types of abuse. He would prefer the reference to trafficking to be retained, but was prepared to join a consensus in the interest of saving time.

93. **Ms. Motoc** said that certain issues should be emphasized to avoid a situation in which States thought that change was not necessary. Because generic terms would let them avoid the issue, she favoured a list.

94. **Mr. Amor** said that the positions of the Committee members were in fact quite close to each other.

95. **Ms. Chanet** said that although she had previously held the position that it was better not to be too specific, she could see that States would gain a better understanding of their violations if certain types of violations were explicitly named. The whole world must be treated with complete equality.

96. **The Chair** said that it was his understanding that a consensus had been achieved: rather than generic terms, there would be a list of specific violations in paragraph 54.

97. **Mr. Fathalla** requested clarification as to why the three bullet points in paragraph 54 referred only to trafficking rather than to all the issues in the chapeau, given that trafficking was already referred to in the chapeau.

98. **Ms. Keller** said that it would be necessary to look at the revised text. She suggested that the Committee should study the new version and determine if it wished to retain paragraph 55 as written.

99. **The Chair** said that that issue could be considered at a later date.

The meeting rose at 1.02 p.m.

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Ninety-eighth session

Summary record of the 2696th meeting

Held at Headquarters, New York, on Monday, 15 March 2010, at 3 p.m.

Chair: Sir Nigel Rodley ..... (Vice-Chair)

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fifth periodic report of New Zealand

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent *within one week of the date of this document* to the Chief, Official Records Editing Section, room DC2-750, 2 United Nations Plaza.

Any corrections to the record of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

10-27115 (E)

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In the absence of Mr. Iwasawa, Sir Nigel Rodley, Vice-Chair, took the Chair.

The meeting was called to order at 3.10 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant *(continued)*. (CCPR/C/NZL/5; CCPR/C/NZL/Q/5 and Add.1)

Fifth periodic report of New Zealand

1. *At the invitation of the Chair, the members of the delegation of New Zealand took places at the Committee table.*

2. **Mr. Power** (New Zealand), introducing the fifth periodic report of New Zealand (CCPR/C/NZL/5), said that his Government was committed to its obligations under the Covenant and other core international human rights treaties, recognized the value of Ministerial engagement with the treaty bodies and welcomed the opportunity to share positive experiences and draw upon the expertise of the Committee. The report had been prepared in consultation with civil society and published online; the Government would also publicize the Committee's concluding observations and recommendations.

3. As a founding member of the United Nations, New Zealand was committed to the Organization and to the international promotion and protection of human rights. It continued to encourage all States to ratify international human rights instruments and had played a leading role in developing new instruments. At the national level, New Zealand had long given effect to human rights through a broad range of governmental and non-governmental institutions.

4. The unique constitutional structure of New Zealand included specific human rights protections as well as a number of other instruments and practices to safeguard fundamental rights, including references to the principles provided by the Treaty of Waitangi, concluded in 1840 with representatives of the indigenous Maori population. Within the Government, specialized bodies monitored compliance with national and international human rights law. The judiciary enjoyed complete independence and was strongly committed to the promotion of human rights. Transparency and accessible Government institutions provided great opportunities for public participation by a robust civil society, something of which the country was justly proud.

5. New Zealand had taken a number of measures during the current reporting period to further strengthen its implementation of the Covenant and there had been substantial reviews of legislation in several areas relating to human rights protections. It had also ratified the Convention on the Rights of Persons with Disabilities, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on the Reduction of Statelessness, and progress was being made towards ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

6. The New Zealand Action Plan for Human Rights had been developed by the national Human Rights Commission based on an assessment of the current status of human rights, in consultation with the public, non-governmental organizations and government agencies. At its mid-term review, the Commission had confirmed that there had been substantial progress in almost all the priority areas in the Plan. The independent prison complaints and monitoring procedures had been expanded, including through further reinforcement of the role of the Office of the Ombudsman, and the Independent Police Conduct Authority had been given expanded powers and strengthened safeguards.

7. A number of the issues raised by the Committee in its list of issues had also been the subject of debate in New Zealand and would be discussed in more detail later, including two areas of particular significance — the corporal punishment of children and the disproportionate representation of Maori in criminal justice statistics, both as offenders and as victims of crime.

8. New Zealand was an active supporter of the work of human rights defenders and welcomed the reports produced by the New Zealand Human Rights Commission as well as those of national and international non-governmental organizations. The Government maintained a strong dialogue with those organizations and welcomed the Committee's engagement with the issues that they had raised.

9. **The Chair** invited the delegation to address questions 1-16 on the list of issues (CCPR/C/NZL/Q/5).

10. **Mr. Power** (New Zealand), introducing the delegation's responses to questions 1-16 on the list of issues (CCPR/C/NZL/Q/5/Add.1), said that the Committee's first three questions related to New Zealand's constitutional arrangements, the framework for which had been outlined in the country's previous periodic reports. Within that structure, successive Governments had worked to create and maintain a human rights environment that enabled people to reach their individual and collective potential, regardless of race, gender, disability or religion.

11. The country had implemented the Covenant in a number of ways, including through the 1990 Bill of Rights Act, which gave effect to human rights protections at all stages of the legislative process. Except where there was clear authorization to the contrary, Government actions inconsistent with human rights protections could be overturned by the courts, the Human Rights Review Tribunal and other independent bodies. The Attorney-General was required to bring to the attention of the House of Representatives any Bill that he or she deemed to be inconsistent with the Bill of Rights Act. Since the introduction of the Act, the Attorney-General had reported 49 such Bills, including five in the past year. However, it was for Parliament to determine whether the proposed legislation limited a particular right or freedom and whether that limit was justified. Attorney-General opinions were regularly cited in parliamentary debate and in public submissions to parliamentary committee hearings.

12. New Zealand law followed the principle that, wherever possible, legislation was to be interpreted in a manner consistent with the Covenant and other international obligations. Where certain Covenant rights had not been directly included in the Bill of Rights Act, they had been given effect by other legislation and by common law.

13. Responding to the assertion that New Zealand did not have a formal mechanism for increasing awareness of the Covenant, he noted that the Bill of Rights Act provided for the provision of advice to parliamentarians with regard to the rights affirmed therein. As for the judiciary, in order to guarantee its independence and impartiality, the Government did not provide training. Training was, however, provided by the Institute of Professional Legal Studies, the professional development branch of the judiciary itself, whose current curriculum included consideration of domestic human rights legislation and international human rights instruments.

14. The judiciary had frequent recourse to the Covenant, which had been cited in more than 150 decisions of the superior courts, and the Bill of Rights Act, which had been referred to in more than 2,500 decisions. The Bill of Rights was not supreme law, nor did it contain a formal remedies clause. Nevertheless, the New Zealand courts had established a number of judicial remedies for victims of violations of the Covenant including monetary compensation, stays of prosecution and exclusion of evidence.

15. While the New Zealand courts had yet to determine whether they could issue formal declarations that legislation was inconsistent with the rights and freedoms contained in the Bill of Rights Act, the Supreme Court had affirmed the practice of informally "indicating" the existence of such inconsistencies. There was no formal mechanism to respond to such statements, but the Government took them very seriously. One such case was the *Hansen* case in 2007, when the majority of the Supreme Court had indicated that the Misuse of Drugs Act, by creating a presumption that a person possessing a certain amount of prohibited drugs did so for the purposes of supply and sale, was inconsistent with the presumption of innocence under the Bill of Rights Act. The Government had included that issue in the terms of reference for a review of the Act by the New Zealand Law Commission and, since the written replies had been submitted, the Law Commission had released an issues paper on the control and regulation of drugs. The paper discussed the difficulties in enforcing offences relating to supply and suggested options for addressing the problems of proof that the presumption sought to remedy, while respecting the presumption of innocence. At the current stage, the Law Commission had called for public submissions on the issue and the Government would have the opportunity to respond when the Commission released its final report.

16. Turning to question 4 on the list of issues, he said that New Zealand did not agree with the Committee's assessment that undue delay had occurred in the *E.B. v. New Zealand* case. The delays reflected the exceptional complexity and sensitivity of the case and the paramount importance accorded to the safety and well-being of children. Nevertheless, the efficiency of the Family Court system could be improved and, in response to the Committee's decision, the Government

had taken concrete steps to accelerate procedures, including by promoting less adversarial hearings. The Ministry of Justice was currently undertaking a case-flow analysis of the Family Court, tracking individual cases in order to identify delays and the reasons behind them. The Family Court Rules Committee was in the process of amending the rules to allow judges to make decisions earlier in proceedings where counsel failed to take agreed steps or to appear.

17. With regard to the compatibility of the Prisoners' and Victims' Claims Act 2005, he acknowledged the Committee's concerns and those put forward by non-governmental organizations. However, the Act did not preclude an award of compensation where appropriate. Any deduction of amounts from the compensation for payment to victims of crime was still consistent with the right to an effective remedy. Any delay was limited only to what was reasonably necessary to enable a victim to seek civil redress for damages suffered.

18. Turning to the Committee's sixth question, he noted that the New Zealand Action Plan on Human Rights had been developed by the New Zealand Human Rights Commission in 2005, using an assessment of the current status of human rights. In July 2007, the Government had directed agencies to consider the Action Plan as part of their normal business. Departments were expected to respond to requests from the Commission for information and to identify work meeting the priorities of the Action Plan in their official documents. As mentioned earlier, a mid-term review of progress under the Plan had been conducted, which had shown that although some challenges remained, there had been substantial progress made in almost all priority areas, which had been outlined in the written replies.

19. With reference to question 7 on the list of issues, he noted that New Zealand's counter-terrorism measures had been strengthened in order to meet international obligations and protect the people. The purpose of the Terrorism Suppression Amendment Act of 2007 had been to ensure compliance with Security Council resolutions 1267 and 1373. Under the Act, individuals and entities on the United Nations lists of terrorists established under those resolutions were automatically designated as terrorist entities under New Zealand law. It also enabled the Prime Minister to make additional terrorist designations; those decisions were made against statutory criteria and were open to review by the courts. Since the submission of the written replies, New Zealand had designated four groups not on the United Nations list as terrorist entities: Al Shabaab, based in Somalia; Euskadi Ta Askatasuna (ETA), in Spain; the Kurdish Workers Party (PKK), in Turkey; and Fuerzas Armadas Revolucionarias de Colombia (FARC), in Colombia. The Government had good reason to believe that each group had engaged in a range of terrorist acts and they had been similarly designated by a number of other countries.

20. Reports from non-governmental organizations had expressed concern that the automatic designation of individuals or organizations listed by the Sanctions Committee was inconsistent with procedural fairness; however, under the United Nations Charter, New Zealand was obliged to give effect to resolutions adopted by the Security Council. Although protecting sensitive information while maintaining fair procedures could be difficult, New Zealand's legislation struck a fair balance and its designations were subject to judicial oversight. The Terrorism Suppression Act provided for a triennial review by the Prime Minister of those designations not on the United Nations list. The Prime Minister was then required to report to the Parliamentary Intelligence and Security Committee on the renewal of any such designation, decisions which were again subject to judicial review.

21. With regard to the enquiries about "Operation Eight", he noted that since proceedings were still ongoing, it would be inappropriate to make any further comment than already included in the written replies. He did, however, acknowledge the criticisms that had been voiced, which would be taken into consideration in the range of ongoing court and other proceedings. Questions of whether the police had been in compliance with human rights safeguards would be determined both in the prosecution of serious criminal charges and in the civil claims and complaints made. Police actions had also been the subject of claims to two independent bodies and three United Nations special rapporteurs. All those systems for addressing complaints were working as intended. The police force was committed to mitigating any negative or disproportionate effects felt by the affected community and New Zealand's Commissioner of Police had engaged personally with the community in the aftermath of the investigation. Lessons had been learned, and would continue to be learned.

22. Moving on to question 9, he said that the Foreshore and Seabed Act 2004 had been enacted during the current reporting period. It had been criticized by the Committee on the Elimination of Racial Discrimination and by various non-governmental organizations. There had been much debate in New Zealand and consequently, a Government review of the Act was in progress, which had been commended by the Human Rights Commission, among others. The Act would likely be repealed, but no decisions had been taken about what would replace it.

23. With regard to question 10, he said that a number of institutions in New Zealand were responsible for advocating and promoting respect for the rights of immigrants, asylum-seekers and refugees, chief among them being the Office of Ethnic Affairs, established in 2001. Some examples of the work of that Office included: the development and dissemination of a tool for government policymakers to increase the Government's responsiveness to the needs of ethnic communities; and the management of a free telephone interpreting service to facilitate accurate and confidential communication between people with little or no English and their service providers. The Government had implemented various measures to help newcomers settle and integrate into society. The Settlement Strategy and its accompanying Plan of Action included initiatives at both the regional and national levels.

24. Turning to question 11, he noted that recent statistics showed that women continued to be underrepresented at senior levels of both the public and private sectors. New Zealand did not have targets to improve the representation of women in those sectors at present. It should be noted, however, that the posts of Governor General, Chief Justice, Speaker of the House, Prime Minister and Leader of the Opposition had all been held by women in recent years. The percentage of women serving on the boards of State-owned companies had increased to 35 per cent, and the percentage of women on Statutory Boards stood at 42.3 per cent. Following the last election, 41 of the 122 members of Parliament were women, exceeding the target of 30 per cent recommended by the Commission on the Status of Women. Six of the 19 Cabinet Ministers were women, also representing more than 30 per cent.

25. With regard to the question about the Taskforce for Action on Sexual Violence, one key outcome had been the formation of a strong collaborative relationship between the Government and the community sector. The final report presented by the Taskforce in July 2009 had included a number of recommendations for future action in the areas of prevention, services for victims and offenders, and the criminal justice system. Changes were also proposed to the Crimes Act 1961 and the Evidence Act 2006, changes supported by several non-governmental organizations. The Government was actively considering the report: education, health, social and justice sector agencies were analysing the recommendations to help develop a formal response to the report, which was expected in the coming months.

26. Responding to question 13 on the list of issues, he said that significant developments during the reporting period included New Zealand's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the enactment of the Corrections Act of 2004. Under section 16 of the Mental Health (Compulsory Assessment and Treatment) Act of 1992, all persons compulsorily detained in New Zealand on mental health grounds had prompt access to judicial review of their detention. New Zealand's inspection regimes were in line with the United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care and included the designation of the Ombudsmen as a national preventive mechanism under the Optional Protocol to the Convention against Torture to monitor the situation of detainees in health and disability facilities. Nearly one third of the country's mental health facilities had been inspected within the previous 12 months.

27. The Department of Corrections and the Ministry of Health would continue to work together to improve the treatment of prisoners with mental illness. Existing services included a mandatory mental health screening of all incoming prisoners and provision of medical care to those identified as having mental-health-related needs. The New Zealand Human Rights Commission had found mechanisms for monitoring the situation of people detained for mental health reasons to be consistent with international standards.

28. The Government shared the Committee's concern about the high level of incarceration of Maori, who

made up 51 per cent of the total prison population. The Government's preventive approach to crime focused on improving services provided to those at risk of becoming offenders or victims. While the Government had not set specific targets for combating inequalities, it had a particular interest in reducing the overrepresentation of Maori women in prison. Addressing the drivers of crime would take some time; in the interim, the Department of Corrections had implemented a range of strategies for reducing Maori recidivism.

29. Regarding the Committee's concern about the competitive tendering of prison management, he underscored that prisoners would remain in the legal custody of the Chief Executive of the Department of Corrections. Private prison providers were required to comply with all relevant international standards and domestic legislation on the treatment and welfare of prisoners; failure to do so would result in termination of the contract. Moreover, the Ombudsmen had independent oversight of all prisons managed under the contract, and prisoners were guaranteed access to the Ombudsmen if they wished to raise a complaint.

30. In the Government's previous experience with private prison management, the prison in question had had a very low incident rate, and the contracted provider had introduced significant positive innovation, including in the range of programmes available for prisoners.

31. Noting the concerns expressed by the Committee and in the various shadow reports regarding the use of tasers, he underlined that their introduction would not constitute a departure from New Zealand's tradition of having a largely unarmed police force. Tasers would only be used by officers trained and approved to carry them, and strict operational guidelines were in place to restrict their use to situations where greater or lethal force would otherwise have been justified.

32. **Ms. Majodina**, noting with concern the written reply to question 1 on the list of issues, asked how many bills had been enacted since 1990 despite an opinion by the Attorney-General that they were inconsistent with the Bill of Rights Act. She asked what steps were being taken to remedy the limited progress made towards achieving the objectives set forth in the New Zealand Action Plan for Human Rights, in particular those related to strengthening the human rights framework of policymaking. What was the status of the Treaty of Waitangi in relation to the Bill of Rights Act?

33. On the specific question of whether New Zealand law currently prohibited discrimination on the full range of Covenant grounds, the written replies seemed to concede that discrimination on the basis of social origin and property was still not expressly prohibited. In that connection, more information on progress made towards a review of the grounds of discrimination, proposed in the New Zealand Action Plan for Human Rights, would be welcome.

34. Initiatives to inform Members of Parliament and the judiciary on the Covenant and international human rights law had some weaknesses. In that regard, the Committee welcomed the New Zealand Human Rights Commission's proposal that treaty body recommendations and reports to human rights treaty bodies should be tabled in Parliament.

35. Turning to question 2, she pointed out that the Government's oral and written replies had drawn attention to the Supreme Court ruling on the inconsistency of the Misuse of Drugs Act with the Bill of Rights Act. Noting the New Zealand Law Commission's call for public submissions on its proposed amendments to the Misuse of Drugs Act, she asked what role the New Zealand Human Rights Commission would play in that process. Lastly, the Government's position on the judicial creation of new remedies as stated in the report was inconsistent with that of the Attorney-General in the Court of Appeal in the case of *Attorney-General of New Zealand v. Chapman*.

36. Referring to question 5, she requested information on how prisoners' claims currently covered by the Prisoners' and Victims' Claims Act would be treated after key provisions of the Act expired on 1 July 2010.

37. Turning to question 13, she asked whether the inspection systems in place were fully in compliance with the Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care. With regard to measures taken to address the high number of persons with mental illness in prisons, it remained unclear whether any specific aspect of the care provided in prisons could be identified as seriously defective. Of particular concern was the finding in the Auditor-General's performance

report on limited services for female and Maori inmates.

38. After conducting research on the matter, the Department of Corrections had acknowledged that the high levels of incarceration of Maori were due to some extent to institutional bias against them, though New Zealand had categorically refuted the existence of any such bias at its universal periodic review before the Human Rights Council in 2009. She wondered if the Government had taken any steps to examine the evidence gathered by the Department of Corrections, and whether any measures were envisaged for determining the effectiveness of Government programmes aimed at reducing Maori recidivism.

39. **Ms. Keller** commended New Zealand's exemplary cooperation with both the Committee and civil society. Referring to question 3, she also welcomed its willingness to consider further constitutional protection of human rights, and wondered whether it might take on board recommendations made by the New Zealand Law Society in its report to the Committee, on the adequacy of remedies available to victims of Covenant violations. It would also be useful to know whether it had considered extending the power of the Human Rights Review Tribunal to make formal declarations of inconsistency in respect of select rights in the Bill of Rights Act, not just in case of unjustified discrimination; whether the Bill of Rights Act might be amended to allow the New Zealand Human Rights Commission to oversee immigration laws and policies; and whether it intended to consider remedies for those abused in State care, in view of the testimonies of participants in the confidential forum for former inpatients of psychiatric hospitals.

40. Referring to question 4, she requested information on the outcome of the five-day hearing on the case of *E B. v. New Zealand*, regarding the author's access to one of his children.

41. Turning to question 9, she wondered how the Government planned to guarantee that the acts that would replace the Foreshore and Seabed Act of 2004 would be in line with the Covenant and the Treaty of Waitangi, and respect the rights of the parties to the Treaty. She would also like to know whether it intended to accept the United Nations Declaration on the Rights of Indigenous Peoples.

42. Referring to question 10, she enquired about the success of interim measures to guarantee that undocumented children had access to education until the passage of a new immigration act in 2009. She also wondered how the State party intended to prevent unjustified detention of asylum-seekers and refugees under the new act. In addition, further clarification was requested on the reluctance to grant permanent residence to disabled persons thought likely to be a burden on the health care system. How did the Citizenship Amendment Act of 2005, which deprived children born to non-residents of their citizenship rights, comply with the prohibition against discrimination in the Covenant? What measures had been taken to protect minority women from discrimination?

43. She asked whether data on racially motivated crime would be gathered in order to assess the extent of protection afforded to victims, and sought clarification on the justification for the differences in treatment of asylum-seekers granted refugee status.

44. Referring to question 16, she would like to know whether any studies had been conducted on the consequences of the use of tasers; whether the State party would consider relinquishing tasers in light of the 2009 concluding observations of the Committee against Torture regarding their use; how such use, if continued, would be made transparent to the public; and how it planned to address concerns over disproportionate use of tasers on persons with mental health problems and Maori or Pacific peoples.

45. **Mr. O'Flaherty**, referring to question 6, said that he would like to know whether the New Zealand Action Plan for Human Rights was a truly Government-owned plan that informed policy at the national level, or whether it was more an initiative of the New Zealand Human Rights Commission, as the report and replies seemed to indicate. If the latter was the case, information on why that was so and what could be done to increase Government ownership of the plan would be welcome.

46. With regard to question 11, he asked for an explanation of the opposition to setting recruitment targets to increase representation of women in the labour force, particularly in light of the significant improvement in female representation in the public sector when the Government last set targets of that kind. He would also like to know what was being done

to promote the representation of women at high levels in the private sector.

47. Referring to question 12, he commended the decision to consider ratifying the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, and asked when it was expected to take place.

48. Lastly, returning to New Zealand's response to the *E.B.* case, he welcomed the news that it had sped up the judicial matrimonial procedures in response to the communication submitted to the Committee, as it demonstrated that the Government was moving towards applying the remedy suggested by the Committee. Furthermore, the fact that the communication had had such direct results served as a useful indicator of the impact of the Committee's work.

49. **Mr. Lallah** underscored the exemplary cooperation of New Zealand, the excellence of its report and the quality of the delegation's succinct yet full responses. With reference to question 7, he still needed some clarification about the compatibility of the Terrorism Suppression Amendment Act with the judicial-remedy and due-process provisions of the Covenant. Because officials like police officers sometimes made use of anti-terrorism legislation to deal with some other problem, he would like assurance that during investigations of suspected terrorist acts, arrest warrants were issued by the courts and only on the basis of substantial sworn evidence by officials. He also wondered if pretrial and trial detentions of suspected terrorists were similar in length to those in a normal criminal case, and if there was a similar obligation to bring them under judicial control within a prescribed time and bring them to trial as speedily as possible.

50. He would be interested in knowing whether the required judicial review of all designations of terrorist organizations or persons by New Zealand under its anti-terrorism legislation was done ex officio or by application to the courts; and how many such designations New Zealand had made under its own legislation and how many as a result of its obligation to comply with the Security Council designations under resolution 1267 (1999). In practice, those dual designation systems might create complications, as in cases where evidence used for the Security Council designation was inadmissible in New Zealand courts, or where the courts might decide that funds germane to a Security Council designation had been wrongly impounded. When the persons involved depended for their livelihood on such funds, were there interim measures the State party could take to alleviate the hardship caused? The Committee itself had ruled on that specific issue in *Sayadi and Vinck v. Belgium*, as had the Court of Justice of the European Union in Luxembourg, in the Kadi and the Al Barakaat International Foundation cases.

51. Regarding the events of 2007 alluded to in question 8, and bearing in mind the very precise definition of a terrorist act set out in paragraph 38 of the report, it would be interesting to learn more about the grounds for the forceful action taken by the police in certain Maori communities. Apparently, various persons had been detained and long since charged with possession of drugs and firearms in that connection, yet unaccountably, they were not scheduled for trial until 2011. He wondered if the related claims of discrimination or unjust treatment that had been lodged under the anti-terrorism laws would entail a full-fledged inquiry by the Government, with possible disciplinary measures against any officials involved in wrongdoing.

52. Concerning question 15, he believed that it was problematic for a government, in such a serious matter as the deprivation of liberty, to contract out the management of prisons to the private sector. It was not clear if New Zealand had allotted enough resources for oversight of the company managing its prisons: scrutinizing its day-to-day operations, the quality of the staff it hired, especially when it came to the highly professional duty of subsequent rehabilitation of prisoners, an article 10 requirement, and even the profit the contractor was making, which always came at the expense of quality.

53. With regard to article 2 rights, he could testify from the experience of his own country when it was emerging from colonialism that the entrenchment of the Bill of Rights had marvellous results. It was the real spirit of democracy at work: there were no post-mortems, and the State could move in or any citizen could petition the courts before serious violations occurred.

54. **Mr. Thelin** observed that although the Committee was holding a public meeting, it was public in theory only: in practice, only non-governmental organizations specifically accredited by the United Nations could

attend, and upon the decision of the Headquarters security officers, the doors to the chamber were locked to prevent the public from entering. He asked the Government of New Zealand to try to use its influence to change that situation.

55. As far as he was concerned, the report of New Zealand ranked at the very top for its excellence. He wondered if the designation decisions referred to by Mr. Lallah had in fact ever been subjected to judicial review in New Zealand. He hoped so, because the Court of Justice had ruled in the Kadi and the Al Barakaat International Foundation cases that the Security Council system for listing persons on a terrorist roster did not provide all the legal safeguards required. That made it doubly important to apply the Covenant's legal guarantees in the matter.

56. **Ms. Motoc** said that New Zealand's dealings with its Maori population was a model for the treatment of indigenous peoples. She observed that one of the reasons that so many Maori women were in prison (ques. 14) was the fact that, owing to their status in the indigenous society, many of them serving out sentences in place of their husbands. With regard to question 9, the Government, in its ongoing negotiations with the Maori on land rights and the exploitation of natural resources, especially marine resources, must take seriously into account the response of the indigenous people before reaching any final decision.

57. **Ms. Chanet**, concurring on the quality of the report and the replies, asked whether New Zealand intended to maintain every one of its reservations to the Covenant.

58. The report (paras. 50, 152-166 and 261-264) asserted that no sentence of preventive detention could be imposed retroactively. However, it was still not clear how the Government judged if a person was too dangerous to release before any new offence had been committed. Had there been any change in the law on that matter and on the frequency with which the dangerousness of the detainee was reviewed?

59. Experience had shown that persons could be removed from the lists designating them as terrorists if they could show cause. She was more concerned about the concealment from the defence attorney of evidence to be introduced against a person being tried for terrorism, for which New Zealand had rightly been criticized in the Human Rights Council. The practice was contrary to due process under article 14, paragraph 1, of the Covenant. The Committee's jurisprudence had been very firm throughout on due process — as in general comment No. 29, paragraph 8, general comment No. 24, paragraph 8, and general comment No. 32, paragraphs 5 and 6. She would like clarification on the applicable law in New Zealand and how that totally unacceptable practice could be avoided.

60. Despite all precautions in the use of tasers, the reaction of the target could never be predicted. A Canadian study had shown that tasers could even be deadly, as in the case of epileptics. She urged the Government therefore never to use such weapons.

61. It had emerged from the universal periodic review that the minimum age of legal responsibility in New Zealand was very low: 10 years of age. She wondered if the Government was reviewing the matter.

62. **Mr. Amor** said that the designation of individuals as suspected terrorists had obvious human rights implications and fuller information would be welcome, perhaps when the delegation dealt with question 19. Were persons or organizations entered on a list, for instance, before or after a very careful investigation; were their accounts impounded; what happened to their property?

63. With regard to article 18, New Zealand was doing much to encourage religious or cultural tolerance and rapprochement among the various communities. However, paragraph 288 of the report gave him pause: a judge had ruled that, while women giving evidence could not wear burkas in interests of a fair trial, they could, to satisfy their religious beliefs, testify from behind a screen. Obviously, religious freedom had to be respected — although, often, cultural attitudes were mistakenly taken as an expression of religious belief. The instance cited, at any rate, had implications also for the rights under articles 2, 3 and 26, which could not be disregarded. It was an unacceptable instance of "faceless" democracy, an unprecedented solution based on concealment and recognition of a kind of special status.

64. Lastly, he asked if the delegation included a Maori member.

65. *The meeting was suspended at 5.20 p.m. and resumed at 5.35 p.m.*

66. **Mr. Power** (New Zealand) said that one of the members of the delegation identified as Maori.

67. With respect to the sunset clauses in the Prisoners and Victims Claims Act due to expire 1 July 2010, the Cabinet was actively considering the matter and the Government's approach would become clear in the coming weeks.

68. Regarding the timeline for the ratification of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, one legislative amendment was needed on the offence of inducing consent to adoption by a third party, currently contained as a clause in the Child and Family Protection Bill, which had been introduced in Parliament in mid-2009. The bill was expected to be adopted in 2010 and ratification of the Optional Protocol should follow immediately.

69. Regarding the entrenchment of the Bill of Rights Act of 1990, granting higher status to the Bill of Rights than to ordinary legislation would require a significant shift in the constitutional balance of power from the Parliament to the judiciary. Such a fundamental shift could lead to the unacceptable intrusion of political factors into judiciary appointments. While courts could not strike down legislation, they wielded considerable power in protecting rights and freedoms, including the judicial creation of new remedies and the interpretation of legislation in accordance with the Bill of Rights.

70. With respect to the position of the Attorney-General in *Attorney-General of New Zealand v. Chapman*, a case involving a former prisoner's claim for compensation, the Government was committed to the availability of appropriate remedies for breaches of the Bill of Rights Act, but did not consider compensation to be appropriate or available for every kind of breach of every right.

71. The Foreshore and Seabed Act of 2004 had originally vested the ownership of the public foreshore and seabed in the Crown to hold as its absolute property, thereby extinguishing any uninvestigated related customary titles. The Act provided statutory recognition for two types of customary interests: territorial customary rights, which would have been customary titles but for the Act, and non-territorial customary rights, described as ongoing activities, uses or practices. The Act allowed groups to enter into negotiation with the Crown to seek awards, subject to High Court confirmation that certain requirements had been met. Many Maori and non-Maori had criticized the Act, as had been noted by the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people following his 2005 visit (E/CN.4/2006/78/Add.3).

72. The Government had concluded a confidence and supply agreement with the Maori Party and had committed to a review of the Act. As a first step, an independent panel of experts had been established to review the Foreshore and Seabed Act in March 2009, charged with determining whether the Act effectively recognized and provided for customary or aboriginal titles in public interests, including Maori, local government and business, and the issue of coastal marine area. If the Act was found not to provide those options, the panel had been asked to outline the most workable and efficient methods to do so. The panel had presented its report on 30 June 2009, and in November 2009, the Government announced that it was working on a replacement to the Act. The Government was continuing to meet with stakeholders and Maori leaders to discuss options.

73. Regarding the proportion of Maori women in the prison population and the effect of substitution, there were currently 485 female inmates, of which 285 identified as Maori. Corrections department data had not indicated a trend tied to substitution.

74. New Zealand did not record complaints, prosecutions or sentences related to purely racially motivated crime and was not in a position to do so in the medium term. Police monitored trends in racially motivated crime using a Crime and Safety Survey. Racially motivated crimes were prosecuted under the category of general offences such as unlawful assembly, riot, disorderly behaviour, and offensive language but were more severely punished through sentence enhancement provisions in the Sentencing Act 2002 under which hate crimes were treated as an aggravating factor.

75. Prior to conducting the trial on the use of tasers, the police had done a literature review on police use of tasers and related scientific and medical research. Thus, the developers of the standard operating procedures manual had taken into account domestic and international concerns with the manner in which the device had been used in the past. An extensive evaluation report had supported the Police Commissioner's decision to reintroduce the use of taser devices nationwide. The operating procedures for the use of taser devices were reviewed and revised regularly and contained safeguards to ensure that tasers were not used inappropriately.

76. Only officers completing a rigorous training could use tasers. They were not carried routinely and had to be checked out by a qualified officer at the beginning of a shift. The device must be kept in a locked metal box bolted to the floor of the car that could be opened only with the permission of supervisor following the assessment that a situation was likely to pose a threat of assault to the police or the public. Tasers could not be fired at the head, genitalia, or chest. Police officers were held criminally responsible for the use of excessive force during the performance of their duties and could also be subject to internal disciplinary action for any excessive use of force or misuse of a technical option. Tasers could not be used to induce compliance on a non-cooperative but non-aggressive person. In addition, they could not be carried by officers during demonstrations or used on a subject believed to be doused with or close to an accelerant or explosive or on females known to be, or expected to be, pregnant. Using multiple cycles of taser discharge was prohibited.

77. The police were responsible for providing an appropriate level of care to those who had been exposed to the application of a taser, including continuous monitoring until the individual was examined by a medical practitioner. There had been one report of a taser-related health issue in 2009, which had involved a minor probe wound.

78. Maori, Pacific islanders and people affected by mental health disorders had been overrepresented among those on which the device was used during the trial period, and the police had engaged stakeholders in discussions to address the underlying causes. Maori overrepresentation in criminal justice statistics, both as offenders and victims, was unacceptable to all parties in New Zealand. A one-day conference held to discuss the underlying causes of crime and how they should be addressed had been attended by representatives of all political parties. The Law Commission of New Zealand was nearing completion of a two-year study on the reform of the use of alcohol in New Zealand.

79. With respect to the Declaration on the Rights of Indigenous Peoples, since the universal periodic review in 2009, the Government, in consultation with the Maori Party, had been actively considering whether it could support the declaration and in what form. Many of the rights in the Declaration had been enjoyed in New Zealand for a long time. New Zealand had some of the most extensive consultation mechanisms in the world and the historical treaty settlements process was an unparalleled system of redress accepted by both Maori and non-Maori. The parameters of New Zealand's legislative framework required gradual steps towards acceptance of the Declaration.

80. Regarding the citizenship of children without a New Zealand parent, under the Citizenship Amendment Act of 2005, a person born on or after 1 January 1978 was a New Zealand citizen by birth if otherwise stateless. There had been no change from the previous law.

The meeting rose at 6 p.m.

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Human Rights Committee

Ninety-eighth session

Summary record of the 2697th meeting

Held at Headquarters, New York, on Tuesday, 16 March 2010, at 10 a.m.

Chair: Mr. Pérez Sánchez-Cerro ..... (Vice-Chair)
later: Sir Nigel Rodley ..... (Vice-Chair)

Contents

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fifth periodic report of New Zealand (*continued*)

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10-27316 (E)

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In the absence of Mr. Iwasawa, Mr. Pérez Sánchez-Cerro, Vice-Chair, took the Chair.

The meeting was called to order at 10.05 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant (*continued*)

Fifth periodic report of New Zealand (*continued*) (CCPR/C/NZL/5; CCPR/C/NZL/Q/5 and Add.1)

1. *At the invitation of the Chair, the members of the delegation of New Zealand took places at the Committee table.*

2. **The Chair** invited the delegation of New Zealand to continue its replies to the oral questions put at the previous meeting by members of the Committee in connection with questions 1-16 on the list of issues.

3. **Mr. Power** (New Zealand), responding to the questions raised by Ms. Keller, said that approximately 550 people had filed claims against the Government for ill-treatment in State-run institutions, most of which pertained to events from the 1980s or earlier. The claims had been funded through legal aid. The Government had settled a number of the compensation claims and was continuing to engage with the remaining claimants. Rehabilitation and other assistance was available through New Zealand's Accident Compensation scheme. The confidential listening and advice service, established in 2008, enabled those who had suffered abuse in State institutions to discuss their experiences and obtain social services and counselling. Claimants were expected to engage directly, rather than through lawyers, but the service did not replace or limit their rights to pursue compensation.

4. With regard to the *E.B. v. New Zealand* case, he reported that according to the most recent publicly available information, counsel for the non-custodial parent had filed an appeal against the Family Court decision in early 2008 and an expanded appeal in September of that same year. The appeal had been heard in November 2008 and, following further written submissions, decided in March 2009. The High Court had held that there was not sufficient information to make a decision about access to the youngest child and directed the parties to seek to agree on a process for resolving the matter within 30 days. The Government would enquire whether any further information could be provided to the Committee, as far as possible within the context of sensitive proceedings.

5. With regard to the questions about the implementation of Security Council terrorist designations, he said that the Government believed that it had a fundamental obligation to comply with Security Council resolutions under Chapter VII of the Charter of the United Nations. The New Zealand Terrorism Suppression Act therefore gave direct effect to designations made under Security Council resolution 1267 (1999). Legislation did not provide for judicial challenges to such designations, except through the proper review procedures determined by the Security Council and the relevant Sanctions Committee, procedures which had recently been significantly improved. As for New Zealand's own designations, once the Prime Minister had made such a designation, any affected person could apply for a judicial review, which could also include a request for suspension of the operation of the designation until the case was decided. As Ms. Chanet had observed, a designation might rely on confidential information which could not safely be disclosed, but the Government considered that to be unavoidable for security-related designations. The Government was committed to fair procedures, but since designation was not a criminal matter, the presumption of innocence did not apply. There had been no instance of a judicial review of a designation to date, not least because the four designations made the previous month had been New Zealand's first.

6. Responding to Mr. Lallah's questions about "Operation 8", he said that all the arrest warrants had indeed been issued on the basis of sworn evidence. The Solicitor-General was required to give consent before charges under the Terrorism Suppression Act could proceed. He had determined that there was not a sufficient basis for the charges in that case, but also that the police had not acted in any way improperly in pursuing them, given the serious threat to public safety. The Government rejected any suggestion that the remaining charges were not serious. He could not comment on the evidence at issue as some remained subject to pretrial challenges to admissibility; however, the charges concerned the intention to undertake violent action with the purpose of inducing terror among the population. Those charged all enjoyed Covenant rights relating to criminal trials and they had all been released on bail, subject to various conditions,

within four weeks of their arrest. Those initially detained had been held in the normal remand prison system. Responding to the concern that the case would not be heard until the following year, he said that the charges were not ready to proceed. The case involved 18 defendants and there had been numerous pretrial applications, some of which were themselves awaiting appeals to be heard in June. The trial was expected to require a further three months of hearings and had been scheduled to allow sufficient time to conclude the pretrial applications and other matters. Due process was being followed very carefully.

7. Responding to Ms. Chanet, he said that preventive detention was a sentence imposed for certain serious violent or sexual offences where there was specialist evidence that the offenders posed a grave risk of reoffending. As a result of the Committee's views in the *Rameka* case, the Government had advised that a sentence of preventive detention would be open to review by the parole board after five years.

8. Turning to the question asked by Mr. Amor about the refusal to allow a witness to testify wearing a burka, he affirmed that the Bill of Rights Act recognized the right to manifest one's religion. However, in that case the court had made an extensive and reasoned assessment of the likely effect of the witness's request on the fairness of the trial. It had held that the request was not acceptable in the circumstances but that, in light of her sincerely held religious beliefs, she could be screened from the accused, but not the judge, lawyers and other court officials. The Government did not consider such reasonable accommodation of religious observances to be discriminatory or anti-democratic.

9. Moving on to the questions asked by Ms. Keller, he said that special policy of granting limited purpose permits to children of foreign nationals unlawfully in New Zealand so they could access compulsory education had been successful. In 2006-7, only 22 permits had been issued to children aged 19 and under for study or other purposes. Since the introduction of the special policy, the number issued had risen to 611 permits in 2007-8, 839 in 2008-9 and 582 thus far in 2009-10.

10. The Immigration Act (2009) allowed for the detention of foreign nationals only when they were denied entry at the border or liable for deportation. However, New Zealand detained very few people for immigration purposes. Neither current legislation nor the Immigration Act allowed for detention on the basis of an asylum claim alone. People were detained only when there were concerns about the safety and security of New Zealand or if they posed a risk to the integrity of the immigration system. The Immigration Act specifically provided that refugees and protected persons who could not be deported could not be detained. New Zealand was not reluctant to grant visas to persons with disabilities: its screening policy was in place to protect public health, largely from communicable diseases. Decisions were made on a case-by-case basis.

11. The Office of Ethnic Affairs undertook a number of measures to counter discrimination, including against women. The Settlement Strategy and its Plan of Action also contained a range of such measures. The Department of Labour funded a national organization to support its programme for the prevention of violence against Asian women, who were mainly migrants.

12. Responding to the question about the differing treatment between asylum-seekers and refugees who were not citizens or permanent residents, he said that very few refugees in New Zealand were not granted permanent residence. Once asylum-seekers had been granted refugee status, in order to be granted residence under the special residence policy they had to establish their identity and meet the generic immigration requirements of good health and good character. Residence could not be granted unless their identity was known, but exceptions to the health and character requirements could be made in most cases. Where there were serious concerns about character, only a temporary work permit might be granted, allowing the person to remain lawfully and to access the workforce and a range of social services.

13. With regard to the question of lifting the limitation on the role of the Human Rights Commission to oversee immigration law and policy, he said that the limitation recognized the nature of immigration itself — requiring decisions to be made on the basis of personal characteristics. However, there were legislative mechanisms to appeal most decisions before dedicated appeal authorities. The Human Rights Commission could investigate complaints and allegations of racism or discrimination in the immigration system, make public statements and report to the Prime Minister about the consistency of

immigration law and policy, as it had done throughout the course of the review of the Immigration Act.

14. Responding to Ms. Majodina's concern that Parliament could enact legislation that was inconsistent with the Bill of Rights Act, he said that in New Zealand, Parliament was sovereign. The opinion of the Attorney-General on compliance with the Bill of Rights Act was an important part of its deliberations, but the ultimate decision as to whether a particular right or freedom had been limited and whether such a limitation was justified lay with the democratically elected Parliament. Thus far, 49 bills had been found by the Attorney-General to be inconsistent with the Act. Of those bills 19 had been enacted as introduced, 9 bills had been enacted after being amended during the legislative process to address the Attorney-General's concerns, and 21 had not been enacted. There was merit in the suggestion that the Attorney-General should provide advice on the consistency of every bill with the Bill of Rights Act, rather than only bills that appeared to be inconsistent. It was worth noting that, since 2003, all advice from the Ministry of Justice and the Crown Law Office to the Attorney-General had been published on Ministry websites, helping to ensure that information about every bill was available both to the House and to the public. There was also merit in the suggestion to table New Zealand's reports to the Human Rights Committee in the House, even though they were Government reports and did not require the approval of the House of Representatives. Nevertheless, in order to raise awareness of Covenant rights, the Government would consider the idea in the future.

15. New Zealand had committed to review its statutory protections of rights and freedoms, and many issues would be considered. As a first step, officials from the Ministry of Justice had discussed the matter with the Human Rights Commission and with wider civil society. The discussions had been extremely positive and highlighted areas for further consideration.

16. With regard to Ms. Keller's question about the Human Rights Review Tribunal, he said that the Government might consider extending its powers in any future review of the protection of rights and freedoms in New Zealand. For the time being, however, the New Zealand courts had discussed the issue but had not yet determined whether there should be a formal power to issue declarations that legislation was inconsistent with the Bill of Rights Act.

17. Turning to the matter of targets for the recruitment of women, he said that in 2009, the Prime Minister, John Key, had launched a new initiative, in partnership with the Minister of Women's Affairs, Business New Zealand — the country's largest business organization — and the Institute of Directors in New Zealand. Its aim was to present the case for women on boards from a business perspective and it actively advocated for more women in corporate governance. In another private sector initiative, a group of prominent New Zealand businesswomen, including the former Prime Minister Dame Jenny Shipley, had been established to push the case for female directors, provide governance, training and mentorship. It was not strictly correct to say that there were no targets for the employment of women: the former Prime Minister Dame Jenny Shipley had announced in 1995 a target of 50 per cent women appointed to Government statutory boards by 2005. The target had been extended to 2010 by the then Minister of Women's Affairs and had informed the recent work of the current Minister. Speaking as the Minister of State Owned Enterprises, he could confirm that the Minister of Women's Affairs was actively pursuing the issue. The Cabinet also actively considered the representation of women during the appointment process for a range of Government bodies.

18. Addressing Mr. O'Flaherty's question about the New Zealand Action Plan for Human Rights, he said that the Government had supported the Plan's development by the Human Rights Commission, but had chosen not to formally adopt it. It directed departments to consider implementing the Plan's priorities for action as part of their normal business and to identify such work in their statements of intent and annual reports. That approach encouraged direct dialogue between the Commission and the departments and allowed for the greatest flexibility.

19. All persons detained on mental health grounds had prompt access to judicial review, as specified in the Mental Health Compulsory Assessment and Treatment Act (1992). In addition, the inspection system for persons in mental health facilities was consistent with the United Nations Principles for the Protection of Persons with Mental Illnesses and for the Improvement of Mental Health Care. All patients could make complaints, which were investigated by district

health inspectors and reported to the area directors of mental health services. The Ombudsman had been designated as a national preventive mechanism and, as of June 2009, had made 89 visits to mental health facilities. With regard to the Auditor-General's report of the deficiencies in the care of prisoners with mental illnesses, he said that the Ministry of Health, District Health Boards and the Department of Corrections worked closely together to ensure they were treated appropriately and remained safe. The Auditor-General's report had highlighted problems resulting from the increasing number of prisoners and the high demand for inpatient beds, but confirmed that the needs of prisoners with severe mental illnesses were generally well met. Responsiveness was more limited for those with mild or moderate illnesses or personality disorders. The availability of inpatient beds had been identified as an issue for women in particular, and the importance of shaping services to Maori cultural needs was also a consideration. The Government was actively considering those matters.

20. With regard to the high numbers of Maori in the prison population, women in particular, the Government believed it to be due to the complex drivers of crime. The Drivers of Crime summit had been a first step in changing the emphasis towards preventing crime. The Government had no direct evidence to support the case for any institutional bias, but recognized that the disproportionate representation of Maori needed to be the focus of its work on drivers of crime.

21. Turning to Mr. Lallah's question about prison management, he said that private management provided opportunities for innovation and change. However, it was also important to specify standards clearly. Performance was closely monitored in a number of ways. Profit levels would not be monitored, but all tenders would be competitive.

22. With regard to Ms. Chanet's question about the age of criminal responsibility, he said that in New Zealand the age was 10 for murder or manslaughter and 14 for most other offences. The Government had no plans to change them. The difference in the age was a reflection of the fact that murder and manslaughter were a special category of crime and required that the offenders be held accountable for their actions. In such cases, the prosecution must prove that the child knew the act to be wrong or contrary to the law, in addition to meeting the normal burdens for any other criminal matter.

23. **Mr. O'Flaherty** welcomed the information that targets for the recruitment of women were used to some extent. With regard to the status of the New Zealand Action Plan for Human Rights, he noted that all the merits of the Government not officially adopting the Plan could equally apply if it did, so he strongly encouraged the Government to reconsider its position and to place human rights at the heart of Government. It would be an opportunity to demonstrate leadership internationally and to share the country's good practices in the area of human rights.

24. **Ms. Chanet** noted that her question on reservations had not been addressed. With regard to the use of tasers, she could see that many precautions were being taken but accidents could still happen. Tasers had been found to be much more dangerous than originally thought.

25. She reiterated her concern about the use of concealed evidence in counter-terrorism law, even though there had been no actual cases. She hoped that when such a situation arose, the Government would take account of the observations that had been made regarding the difficulties concerning due process posed by such evidence. The fact that evidence was concealed did not in itself make it true — there was a strong chance that adversarial proceedings could show the evidence to be false. On the issue of preventive detention, she noted that a recent case in the European Court of Human Rights against Germany had supported her view with regard to arbitrary detention and violations of article 9 of the Covenant. In that case, the Court had found that there had been unlawful detention in violation of article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, because the danger was not sufficient to constitute a legal basis.

26. **Ms. Majodina** said that, though she appreciated the rationale for the method of implementing the Covenant in New Zealand, there was still some concern that the Bill of Rights Act had the status of ordinary legislation rather than being a set of constitutional rights. With regard to the discussion of the *Chapman* case, she would appreciate further clarification whether the Government believed there were certain categories of breaches of the Bill of Rights Act for which no monetary compensation was available, regardless of

how egregious the breach. If so, she invited the delegation to comment on the consistency of that belief with article 2, paragraph 3, of the Covenant. Turning to the matter of access to judicial review for persons detained on mental health grounds, she remained concerned about the nature of the review available. Reports from non-governmental organizations had suggested that the reviews took an average of only 10 minutes, with no consideration of the Bill of Rights Act or the Covenant.

27. **The Chair** said that the response to the question regarding the *Chapman* case should be made in writing within 48 hours.

28. **Mr. Amor** asked the delegation to clarify whether the role of New Zealand in implementing the relevant sanctions against those individuals or entities on the list of the Security Council Committee established pursuant to resolution 1267 (1999) was simply automatic. With regard to the case of the witness who had not been allowed to testify wearing a burka, he noted that demonstrations of religion must take account not only of article 18, paragraph 3, of the Covenant, but also of articles 2, 3 and 26. Following the logic of the judge in that case, would women wearing burkas only be able to show their identity cards, when requested, to women, for example? He therefore asked whether the delegation considered the case cited to be an isolated one, or whether it was established jurisprudence.

29. **Ms. Keller** said that she was impressed with the legal framework for the use of tasers that had been described. She was, however, concerned about how it would work in practice — when and how were the trained officers supposed to get the necessary permission from a second person in order to open the box containing the taser while on duty? In relation to question 9, she noted that she had seen how effectively a State Party could integrate its indigenous people through her experiences living in Norway. A good relationship with the Maori party was not the same as an established formal consultation process and integration. With regard to the *E.B. v. New Zealand* case, she encouraged the delegation to use the example of the communication to reconsider national law and policy. It was somewhat bittersweet for an individual to have the impression of winning a case before the Committee but for no change to result in the individual's situation.

30. **Mr. Lallah** noted that the delegation had not addressed the question of the principle of privatization in the management of prisons with regard to State responsibility and the guarantees relating to the appointment of staff by the public sector. Regarding the responsibility to comply with Security Council resolutions 1267 (1999) and 1373 (2001), he noted that they did not require a State Party to breach its treaty obligations, which was why he had envisaged the possibility of interim measures in case of need.

31. **The Chair** invited the delegation to address questions 17-27 on the list of issues (CCPR/C/NZL/Q/5).

32. **Mr. Power** (New Zealand), introducing the delegation's responses to questions 17-27 on the list of issues (CCPR/C/NZL/Q/5/Add.1), said that the New Zealand Plan of Action to Prevent Trafficking in Persons, released in July 2009, had been an important development, setting out a range of short-, medium- and long-term goals for government agencies. The Plan gave New Zealand the tools to fight trafficking and protect its victims. Although no cases of human trafficking had yet been detected in New Zealand, the police thoroughly investigated all allegations. Trafficking was a serious criminal offence and carried a maximum penalty of 20 years imprisonment and/or a fine of up to $500,000. The police and social agencies were equipped to identify possible cases and respond to the needs of any victims.

33. Responding to question 18 on the list of issues, he said that the Immigration Bill (2007) had been enacted but had yet to come into force. The "screening process" was used to check the immigration status of travellers boarding aircraft bound for New Zealand. Those who were not entitled to travel to New Zealand were denied boarding by the airline. Concerns had been expressed about the programme by the Human Rights Commission and other bodies, but the programme simply checked the passenger's name and other identifying details against the record of their immigration status to ensure that they would be allowed entry upon arrival. If a passenger who was denied boarding stated their intention to claim asylum, the airline would refer them to the closest office of the United Nations High Commissioner for Refugees. Where a claim was made offshore, the claimant invoked the obligations of the country in which the claim was made. Where a passenger travelled to New Zealand and made a claim of asylum, New Zealand determined that claim consistently with its

international obligations. All claimants had a right of appeal to a dedicated appeal authority and could make further appeals in the New Zealand courts. Where a person was not successful in an asylum claim, and had completed any appeals, they could be removed from New Zealand. In order to ensure that the country continued to act in a manner consistent with its non-refoulement obligations, the Department of Labour conducted interviews prior to any proposed removal to assess any protection or humanitarian needs.

34. Turning to question 19, he recalled his discussion of New Zealand's anti-terrorism regime at the previous meeting. The Terrorism Suppression Act did not remove or narrow the presumption of innocence in any way. If any charges were brought under that Act, the burden would be on the Crown to prove all the elements of the offence beyond reasonable doubt. Recalling also the discussion of the *Hansen* case, in which the Supreme Court had found the Misuse of Drugs Act to violate the presumption of innocence, he explained that the New Zealand Law Commission had released an issues paper on the control and regulation of drugs which addressed, among other matters, the problems of proof that the presumption of supply sought to remedy. The Commission had suggested various options and called for comments before the end of April. The Government would prepare its formal response to the final report of the Commission when it was released. However, he reiterated that rewriting the Misuse of Drugs Act was not a priority.

35. Responding to the Committee's enquiry about the provisions of the Criminal Investigation Amendment Bill (2009), which permitted the expanded collection and retention of DNA samples, he stressed that measures had been put into place in order to minimize intrusion on the rights of individuals. As noted in the written replies, the Attorney-General had found the bill to be inconsistent with section 21 of the Bill of Rights Act. Parliament had taken notice of those concerns during the select committee process and had made a number of amendments to the bill, in particular improving the process for taking samples from young people. Guidelines had also been developed to assist the police.

36. Addressing question 21 on the list of issues, he noted that the High Court had held that the Speaker of the House of Representatives and the Police had acted contrary to the right of peaceful assembly under the Bill of Rights Act, which paralleled article 21 of the Covenant. The Court had stayed the trespass charges, holding that the Speaker had failed to balance the rights of the protesters against such factors as interference with access to parliamentary buildings. A number of compensation claims under the Bill of Rights Act had been brought, and had recently been resolved with financial settlements.

37. Moving to the issue of the rights of the child, he noted that in an official non-binding Citizens Initiated Referendum, the majority had voted to reinstate the defence in section 59 of the Crimes Act permitting the use of reasonable force against a child for the purpose of parental correction. In acknowledgement of the results, the Government had asked the Ministry of Social Development to look into the matter. It had found no evidence of parents being subjected to unnecessary State intervention for lightly smacking children. The Police would continue to report regularly on the operation of the law over the following three years. The Government did not intend to reinstate the defence under the current circumstances.

38. The rates of child abuse in New Zealand had risen substantially between 2004 and 2008 and were unacceptable. In response, in October 2009, Parliament had enacted the Domestic Violence (Enhancing Safety) Act, which allowed the Police to issue on-the-spot protection orders. In December 2008, Parliament had amended sentencing laws to the effect that the defencelessness of children became an aggravating factor in the sentencing of adult offenders. The Government had also agreed to amend the Crimes Act, introducing a new provision to make it an offence for an adult member of the household to fail to act if they knew that a child was being subjected to sexual abuse or was at risk of serious injury or death. In September 2009, the Government had announced a number of initiatives as part of a campaign to stop child abuse, including: a national public information campaign to ensure that parents and other caregivers knew they must never shake a baby; placing Child, Youth and Family social workers in key hospitals; multi-agency safety plans requiring protection agencies to meet whenever a suspected abuse victim was admitted to hospital, to ensure that the child had a safe home to go to upon leaving the hospital; a "preventing shaken baby syndrome" programme, instructing new parents on how to look after a crying baby; and the creation of an Independent Experts Forum to identify ways to prevent child abuse and stop its reoccurrence. The

Police, Department of Child, Youth and Family, and the Ministry of Health were also working together to develop a protocol for collecting information, in order to improve monitoring systems and obtain an accurate picture of abuse incidents. The Law Commission had been requested to give priority to its review of offences against the person, with special regard to offences against children and to ensuring that penalty levels for those offences were consistent with penalties for other assaults.

39. With regard to the question about the age of criminal responsibility for murder and manslaughter, the Government had no plans to raise the age. Prosecutions against 10 to 13 year-olds for such offences was extremely rare. It was important to note that not only was there a higher burden of proof for convicting a child, but also that, in the case of murder, the Court could impose a lesser sentence if imprisonment for life would be manifestly unjust.

40. Turning to the question about electoral reform, he noted that the Government had repealed the Electoral Finance Act (2007) in 2009 and enacted an interim regime while it began the process of creating a new regime. All parliamentary parties and the Human Rights Commission had been consulted at each stage of the review process. The public had been given the opportunity to comment on two occasions: first, on an issues paper released in May 2009; and second, on a proposal document released in October 2009. The new legislation had recently been announced and would be introduced in Parliament shortly. The changes would require disclosure of the total amount of donations that parties received, expressed in bands, the amount of money that parties and candidates could spend on campaigning would be increased, tied to the rate of inflation for each general election, and people who spent more than $12,000 on parallel campaigning would be required to register publicly with the Electoral Commission. Another area of electoral reform was the establishment of a new independent electoral administration body. An Electoral (Administration) Amendment Bill had been introduced to Parliament, transferring all functions relating to the administration of elections to the new body. Lastly, a referendum to gauge voter satisfaction with the Mixed Member Proportional Representation voting system was due to be held in conjunction with the 2011 general election.

41. Turning to question 26 on the list of issues, he acknowledged that the Treaty of Waitangi continued to be the central focus for the ongoing and evolving relationship between the Maori and the Crown. It had been the subject of much discussion, as reflected in the reports from non-governmental organizations and the Human Rights Commission. The Treaty's place in New Zealand's constitutional arrangements was not static, but was a subject of continued debate and judicial interpretation. Consideration of the Treaty was built into the law-making process in New Zealand. All Ministers seeking approval to introduce bills into Parliament must indicate whether they were consistent with the principles of the Treaty. The Treaty was also incorporated into a range of domestic legislation. Regardless of whether a particular Act referred to the Treaty, the Courts had interpreted relevant legislation in a manner consistent with the Treaty whenever possible.

42. The Waitangi Tribunal investigated claims that the Crown had acted inconsistently with the Treaty, and made recommendations to the Government. The Crown had accepted an obligation to take steps to redress the historical wrongs visited upon the Maori in breach of the Treaty of Waitangi. Redress could take a number of forms, ranging from financial settlement to an apology. Since February 2009, the Government had entered into 11 agreements-in-principle and signed 5 Deeds of Settlement. The Tribunal had received an increase in funding in 2007, bringing its current level of funding to $12.15 million per year, which the Government considered sufficient for it to carry out its functions.

43. Turning to the last question on the Committee's list of issues, he said that a draft of New Zealand's fifth periodic report had been circulated for public comment in October 2007 and the Ministry of Justice had specifically sought feedback from non-governmental human rights organizations and met with representatives of the Human Rights Commission. The Ministry had received 14 submissions, which were considered during the preparation of the final report. In light of a recommendation in the recent universal periodic review, the Government was considering ways to improve consultation with non-governmental organizations. The Ministry of Justice had met with various non-governmental organizations in late 2009 to discuss the best format for such consultation. Information about the Covenant was available from the Ministries of Justice and Foreign Affairs and Trade.

The latter also produced a handbook containing the texts of all the main human rights treaties, links to which could be found on relevant Government websites.

44. **Mr. O'Flaherty** said that while the development of an action plan on trafficking was very welcome, it had been extremely surprising to hear that the Government was not aware of any trafficking incidents. He had never heard such a statement before, from any country. A website which tracked information from expert groups such as End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT) stated that women were trafficked to New Zealand from Malaysia, Hong Kong, China and other Asian countries for commercial sexual exploitation and that there was internal trafficking in New Zealand of women and children for commercial sexual exploitation. The same source also noted cases of debt bondage and of women involved in prostitution whose passports had been confiscated. Further detail on the issue would be appreciated.

45. Perhaps de facto trafficking had not been labelled as such, or perhaps trafficked people had been identified or pursued in the context of prostitution legislation. Certainly not everyone involved in prostitution had been trafficked, but it was well known that some of them were. He asked if the definition of trafficking used was completely coterminous with the Palermo Protocol definition or with the definition in the International Labour Organization Convention No. 182 on the worst forms of child labour. In addition, information on efforts to combat internal trafficking would be appreciated, as would information on how trafficking victims' rights were protected in the context of the New Zealand Action Plan for Human Rights. Specifically, the Committee wished to know whether the action plan provided for the delivery of support to victims who did not participate in the criminal process and for support for humanitarian leave to remain within the jurisdiction, and, if so, for what period of time.

46. The reply to the list of issues mentioned a plan to develop operational guidelines for the police on the gathering of DNA samples. Clarification was requested as to why the issue was being dealt with in the operational guidelines rather than at the statute level. The operational guidelines stated that individuals would be identified on the basis of statistical modelling for the purpose of gathering DNA, suggesting that profiling was being used to determine who DNA would be gathered from. If that was indeed the case, more information was needed on measures taken to ensure consistency with human rights and whether members of certain ethnic groups were more likely than others to have their DNA tested. The Human Rights Committee had recently issued a decision in a communication stating that racial profiling was a violation of the Covenant.

47. Efforts to cooperate with representatives of civil society to disseminate information about the Covenant had been mentioned and information about the results would be appreciated. An ongoing dialogue with civil society representatives in New Zealand which integrated all the proceedings and findings of international human rights bodies was worth considering.

48. **Ms. Majodina** said that the recently passed Immigration Act did not give much attention to the detention of asylum-seekers. Under international law, asylum-seekers should not be detained unless there were substantial grounds for doing so, and they should be detained separately from criminals. The authorities of New Zealand were requested to review the issue.

49. The concept of a safe third country, which allowed officials to decline to consider an application for asylum on the grounds that the petitioner could apply in another country, was also cause for concern. People who reached New Zealand generally passed through other countries which were not party to the 1951 Refugee Convention. Therefore, the concept of a safe third country was not appropriate to New Zealand.

50. **Mr. Lallah** said that New Zealand law was in clear violation of article 14, paragraphs 1 and 2, of the Covenant. While the New Zealand Law Commission had been tasked with looking into the matter, the Government had indicated that it was not a priority. The obligations under article 14 were central to the operation of a criminal justice system, and the violation of that part of the Covenant was a very grave one.

51. The concept of the separation of powers existed in New Zealand. However, while it was within the exclusive competence of the courts to assess evidence and to determine the burden of proof, there was legislative intrusion in that province.

52. According to a non-governmental organization, condemned youthful offenders were sent to camps

where they received military-style training. The principal judge for young offenders had described the system as "a spectacular, tragic, flawed failure". The training made youthful offenders fitter and faster, but did not rehabilitate them. Children had rights under the Covenant, and they also had special rights. It would seem that those rights were being violated.

53. The Committee had been told that there were very few offenders between the ages of 10 and 13. If that was the case, why was the minimum age of criminal responsibility for murder and manslaughter not raised? Attention should be given not only to the seriousness of the offence, but also to the maturity of the accused at that age.

54. Politicians tended to lose their enthusiasm for electoral financial reform when their party came to power. The abuse of electoral campaign financing could have a nefarious effect on citizens' right to vote and put in place a Government which gave effect to its will.

55. The centralization of local government in the region of Auckland had had some negative results. There were no Maori seats in the governing body, despite the large Maori population in the area. Under article 25 of the Covenant, the Maori had the right to play an effective role in governing. A proposal to set aside seats for them had been advanced, but they had instead been relegated to an advisory body.

56. It had been said that the Government constantly bore the Treaty of Waitangi in mind when enacting legislation and formulating national policy. However, if that were truly the case, there would be more meaningful Maori participation in the new governing body of Auckland. It was hoped that some day the State party would find a way to give real legal meaning to article 26 of the Covenant. There had been an agreement with the indigenous people of the country, and they should receive consideration in the constitutional system, not just in the laws.

57. Information should be provided to citizens generally, as well as to the judiciary and to legislators, about New Zealand's experience with the international human rights treaty system. The periodic report and the concluding observations of the Committee should be tabled in Parliament. In order to increase awareness at the judicial level, judges could be briefed informally through the national Human Rights Commission about what had taken place during the ninety-eighth session of the Human Rights Committee.

58. **Ms. Keller** requested clarification regarding settlement of the *Police v. Beggs* case and, in particular, what sums had been provided as financial settlements. Absolute numbers were less important than explanations as to why the various parties had received different settlements. Similar information would also be appreciated in regard to the Treaty of Waitangi. Reference had been made in the oral response to commercial, cultural and historical redress. Such redress could range from financial settlement to apology.

The meeting was suspended at noon and resumed at 12.15 p.m.

59. *Sir Nigel Rodley, Vice-Chair, took the Chair.*

60. **Mr. Power** (New Zealand) said that the fact that New Zealand required most foreign nationals to apply for permission to travel to and stay in the country might be one reason why it had been somewhat protected from trafficking. The police investigated all claims of trafficking, but had yet to identify a case. The plan of action envisaged increased training for all those who might identify victims of trafficking. Public awareness was important, as the public would be central in assisting with prevention and prosecution. New Zealand had adopted the definition of trafficking as given in the Palermo Protocol, which covered only transnational trafficking. Because New Zealand did not have a federal system, internal movements of people were not considered trafficking. National criminal law included measures to punish abduction, assault, kidnapping, rape, engaging under-age prostitutes, coercing prostitutes and exploitation of labourers. The Crimes Act prohibited sexual conduct with children and criminalized the organization or promotion of child sex tours.

61. The Government of New Zealand was completing work on a policy to protect victims of trafficking that addressed whether trafficked victims could stay in New Zealand on humanitarian grounds. It was anticipated that the policy would be in place within months. In the meantime, New Zealand had the capacity to respond to victims on a case-by-case basis and ensured that they received needed support.

62. Policy currently being established would address the issue of support for victims who were not part of

the criminal process. The approach would be consistent with international best practices. In the plan of action, victims were afforded protection and assistance, and traffickers were prosecuted to the fullest extent of the law. The website to which Mr. O'Flaherty had referred also noted that reports on trafficking in New Zealand were not complete or necessarily relevant to the current discussion.

63. The Immigration Act 2009 was consistent with the principle of non-return and enhanced the commitment of New Zealand to its immigration obligations. The Act contained new procedures for determining refugee and protection obligations under the United Nations Convention Relating to the Status of Refugees, the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Covenant on Civil and Political Rights. Anyone could claim asylum in New Zealand and have the right to have their claim heard. Under the Act, no asylum claimant, person recognized as a refugee or protected person could be deported.

64. New Zealand desired to make civil society participation in reporting procedures easier. In October 2009, the Ministry of Justice and the Human Rights Commission had sought the views of non-governmental organizations across New Zealand regarding how and when they wanted to be consulted. The response had highlighted the need to improve the dissemination of information throughout the reporting period. Online resources could be better used to keep civil society informed and receive feedback.

65. The tabling of reports to make decision makers more aware of human rights obligations had been discussed. The Institute of Judicial Studies was responsible for training the judiciary, and it had developed a training programme on the human rights instruments. While the Institute was aware of developments in the treaty bodies, the emphasis of the programme was practical, with attention given to issues which came before the courts on a regular basis.

66. The Government position on the age of criminal responsibility and on the issue of stressing the maturity of the defendant rather than the gravity of the crime had already been outlined. The age of criminal responsibility had been set at 10 since 1961. Prior to that the age of criminal responsibility had been seven.

67. A DNA profile could not be extracted until charges had been made. Only the profile was retained, not the sample, and the misuse of DNA profile information had been criminalized. There must be a specific and sufficient basis for taking a sample, and circumstances under which a sample could be taken were limited. Racial profiling was not part of DNA collection. DNA was collected based on the offence charged. The reference to statistics had to do with the scientific method for processing the sample.

68. Electoral finance reform had been designed to be enduring precisely because it was unacceptable for electoral law to change each time a new Government came to power. All political parties in Parliament had been drawn into the process of developing the reform to guarantee that it lasted beyond any single Government.

69. Maori representation through dedicated seats in the new local government in Auckland had been much discussed in New Zealand. The absence of dedicated Maori seats did not prevent their full participation in elections, as they also could run as general candidates. While there were seven dedicated Maori seats in the New Zealand Parliament, there were 20 members of Parliament who identified themselves as Maori.

70. There was a very broad range of programmes in New Zealand designed to turn young people away from criminal activity, some of which contained a structured exercise component. Such programmes had proven popular with many young people, who regarded them as pivotal or life-changing. Their purpose was not to instil military behaviours or values. They focused rather on personal responsibility and goal-setting and also had a rehabilitative function.

71. In New Zealand, it was permissible under some special circumstances to expect an accused person to respond to specific aspects of a charge. That was consistent with case law in other States parties. Since the election of the new Government in late 2008, the Justice Ministry had had a very high volume of work. The concern expressed at the fact that the issue was not a priority had been noted.

72. Financial settlements in the *Police* v. *Beggs* case were not confidential. A total of 150,000.00 NZD in compensation had been paid out to 41 claimants, with amounts varying depending on how much time each individual had spent in detention.

73. Settlements and redress involved acknowledgement of wrongdoing, including solemn, formal and detailed public apologies by the Government. As at 30 June 2009, financial and commercial redress, including return of lands and payment of money, totalled 1,057,000,000.00 NZD. Cultural redress was also an important component of the process. The Government took the process very seriously. It was regarded as a crucial step in the healing of the wrongs which had occurred over a long period of time.

74. **Mr. O'Flaherty** said that it was inaccurate to say that the Palermo Protocol did not embrace internal trafficking. While the Protocol was attached to the Convention against Transnational Organized Crime, it did not contain the element of the necessity of crossing a frontier.

75. Where the State party found itself unintentionally in situations of racial profiling in the course of DNA collection, it must take every possible measure to prevent what would be an unacceptable practice.

76. **Mr. Lallah** said that a group of Maori landowners in the northwest had been negotiating a settlement with the Government for some time. Because they did not agree with what had been offered to them, they had appealed urgently to the Waitangi Tribunal, but their application had been rejected. The Government planned to go ahead with the settlement. The Human Rights Committee had decided a range of cases under article 27 of the Convention regarding protection of indigenous ways of life. Perhaps negotiations should continue before the settlement was enacted into law. The Government should bear in mind that way of life and relation to land were protected under the Covenant.

77. **Ms. Majodina** said that she looked forward to written replies on issues she had raised to which the delegation had not responded orally, due to time constraints. Those issues included the *Chapman* case; procedures for and nature of judicial review for persons detained on mental health grounds; and detention of asylum-seekers and the concept of a safe third country for asylum-seekers.

78. **Mr. Power** (New Zealand) said that the reporting process before the Human Rights Committee was robust and detailed. The level of knowledge which Committee members brought to bear was most welcome. A core value for New Zealand in the field of human rights was integrity in regard to the areas where improvements could be made. Human rights should be relevant to the daily lives of New Zealanders, as well as to the lives of people around the world.

The meeting rose at 12.50 p.m.